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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 745

THE BOARD OF PUBLIC INSTRUCTION OF MANATEE COUNTY, FLORIDA, *et al.*,
Petitioners

versus

CAROLINE HARVEST, *et al.*,
Respondents,

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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No.

BOARD OF PUBLIC INSTRUCTION
OF MANATEE COUNTY, FLORIDA
ET AL., PETITIONERS,

versus

CAROLINE HARVEST, *ET AL.,*
RESPONDENTS

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

The Board of Public Instruction of Manatee County, Florida, and others, your petitioners, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered into the case of *Caroline Harvest, et al., v. Board of Public Instruction, Manatee County, Florida, et al., v. Jerome Pratt, et al.*, on June 26, 1970.

OPINIONS BELOW

The opinion of the Court below (Appendix A, *infra*, pp. A 1-A) has not yet been reported. The opinion of the District Court below (Appendix B, *infra*, pp. A -A) is unreported.

JURISDICTION

The opinion of the Court below was entered on June 26, 1970 (Appendix). No petitions for rehearing were filed. The Clerk of the Fifth Circuit advises that no formal judgments as mandates are now entered in school cases, and that the opinion is issued as and for the mandate in all such cases.

QUESTIONS PRESENTED

DID THE CIRCUIT COURT ERR IN APPROVING THE STANDARDS USED BY THE DISTRICT COURT IN SELECTING A DESEGREGATION PLAN WHICH, IN FACT, COMPELLED SUBSTANTIAL RACIAL BALANCE.

a) DOES THE CONSTITUTION REQUIRE SUBSTANTIAL RACIAL BALANCE IN THE SYSTEM?

b) MUST EACH SCHOOL IN THE SYSTEM BE INTEGRATED OR MAY THERE BE ALL BLACK OR ALL WHITE SCHOOLS?

c) IS POSSIBLE RESEGREGATION A LEGAL STANDARD TO BE CONSIDERED?

d) DOES THE U.S. CONSTITUTION AUTHORIZE A COURT TO ORDER A PLAN WHICH, OF NECESSITY, REQUIRES BUSSING FOR ITS IMPLEMENTATION?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

U.S. Constitution, Amendment XIV, Section 1

> "...No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

42 U.S.C. Section 2000 C-6(a)

> "...provided that nothing herein shall impower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance, or otherwise enlarge the existing power of the court to insure compliance with constitutional standards..."

STATEMENT OF THE CASE

A. Proceedings Below

This case had its inception on January 20, 1965, when a class action seeking desegregation of the Manatee County, Florida, School System, was filed. Petitioners initially adopted and the Court approved a Freedom of Choice Plan.

Thereafter, in response to Respondents' Motion for Further Relief, Petitioners submitted a neighborhood attendance plan which with minor Court ordered modification, was approved by the Court on June 27, 1969.

Pursuant to 28 U.S.C. § 1291, Petitioners apppealed this Order to the United States Court of Appeals for the Fifth Circuit on July 25, 1969. The school system began operation for the 1969-1970 school year using the geographic attendance zones as proposed by Petitioners and modified by the District Court.

The cause became one of numerous schools desegregation cases that were reversed and remanded for compliance with the decision and opinion of the Fifth Circuit in *Singleton v. Jackson Municipal Separate School District*, 5th Cir. 1969, ---F 2d--- which had been handed down on December 1, 1969. The decision in the instant case, rendered on December 12, 1969, was non-specific and substantially the same as opinions used in numerous other cases.

The District Court held a status hearing on December 22, 1969, following which Petitioners contacted H.E.W. on December 23, 1969, as required by the appellate mandate.

On January 7, 1970, in response to Respondents' Motion, the Court of Appeals recalled and amended its December 12 mandate, directing Petitioners to take preliminary steps to prepare for complete student body desegregation by February 1, 1970.

Petitioners received the H.E.W. drawn proposal, which embodied a recommended Plan C and two rejected alternatives, A and B. The H.E.W. plan, received by Petitioners on January 5, 1970, was filed January 6, 1970. With leave of the Court, Petitioners filed two alternative plans, one of which was in actuality the H.E.W. recommended Plan C with a suggested alternative method of implementation. Hearing was set for January 26, 1970.

At the hearing Petitioners filed a Notification of Compliance which indicated that certain changes in Manatee County's School System either had or would be made by February 1, 1970. Petitioners also sought Court approval of the proposed school system with the changes reflected in the Notification of Compliance. The Court accepted the Notification, took note of the motion and indicated it would rule later.

The hearing involved argument, testimony and colloquy with the Court concerning the H.E.W. recommended Plan as well as the two H.E.W. rejected alternative plans, none of which were recommended by Defendants. Of the two previously filed alternative plans, the first put Petitioners of record as favoring a Freedom of Choice attendance plan and was quickly rejected by the Court. The second proposal, the modified implementation for H.E.W. Plan C was favored by Petitioners, only if the Court should see fit to approve the H.E.W. Plan C. The record reflects that the only plan strenuously advanced by Petitioners was that reflected in their Notification of Compliance.

The Court, entered its Order on January 29, 1970, rejecting the H.E.W. recommended Plan C, and hence the Petitioners proposed modified implementation thereof, and the H.E.W. discarded Plan A. The Court approved the second H.E.W. rejected alternative, Plan B, with an implementation date of April 6, 1970. The Court did not rule on Petitioners' Motion for Approval of its system as set forth in the Notification of Compliance.

Petitioners filed a Motion for New Trial or rehearing on February 9, 1970 which motion was denied by Court Order of February 10, 1970. On February 24, 1970, Petitioners filed their notice of appeal.

The United States Court of Appeals for the Fifth Circuit rendered its decision and opinion affirming the District Court on June 26, 1970. The petition seeks review of that decision.

B. Facts

Manatee County, Florida, has a population of 96,000 as of April 1, 1970. The county comprises a single school district with twenty-nine (29) schools: three (3) high schools; four (4) middle schools; nineteen (19) elementary schools, a vocational center and two (2) schools for ungraded special education. The total school enrollment is approximately 17,800, of which 23.3 percent are black and 76.7 percent are white. The county's two major population centers, the cities of Bradenton and Palmetto, are located opposite each other on either side of the mile-wide Manatee River joined by two bridges. Major Negro residential areas are well defined and concentrated within Bradenton and Palmetto, lying at either end of the major bridge connecting the two communities.

Under the neighborhood plan reasserted by Petitioners in their Notification of Compliance, the three high schools were fully integrated as were three of the middle schools. Three elementary schools and one middle school, located within the black residential areas, would have had virtually all black student bodies. Faculties at all schools were desegregated, although not to the statistical extent subsequently required by *Singleton, supra.* These four facilities with all Negro student body composition were the only source of dispute over the plan. At this point over 53% of all black students in the county were in majority white schools. A liberal majority-to-minority transfer policy was in effect.

The H.E.W. devised Plans A, B, and C involved pairing or clustering with consequent departure from traditional K-6 neighborhood elementary schools. Plan A involved a limited tight pairing while Plan B utilized county-wide clustering, grouping each of three predominently black elementary schools

with two or three of the most heavily majority white schools in the system, regardless of distances involved, which were up to 12 miles or 1½ hours on a bus. Plan C, which was the plan *recommended* by H.E.W., involved pairing and clustering of intermediate proportions. All three plans would pair the black middle school with an integrated middle school.

A comparison of the three plans can be best presented by tabular representation of racial percentages in the elementary schools affected. As a preface, Petitioners would note that each school was K-6 under the neighborhood plan, with the exception of Bradenton, which was K-5. Percentages are without kindergartens, which were not affected.

TABLE 1

Plan A

Paired Schools	*Grades*	*% White*	*% Black*
Blackburn	K, 1-3	52.3	47.7
Tillman	K, 4-6	34.4	65.6
Bradenton	K, 1-3	39.6	60.4
Manatee	K, 4-6	53.0	47.0
Memorial	K, 1-3	33.5	66.5
Palmetto	K, 4-6	54.0	46.0

TABLE 2

Plan B

Clustered Schools	*Grades*	*% White*	*% Black*
Bayshore	K, 1-4	69.4	30.6
Bradenton	K, 5-6	82.2	17.8
Daughtrey	K, 1-4	68.6	31.4
Samoset	K, 1-4	68.2	31.8

Blackburn	K, 1-4	62.0	38.0
Palmetto	K, 1-4	66.9	33.1
Tillman	K, 5-6	63.8	36.2
Memorial	K, 5-6	75.6	24.4
Miller	K, 1-4	73.2	26.8
Palma Sola	K, 1-4	73.2	26.8
Prine	K, 1-4	71.2	28.8

TABLE 3

Plan C

Clustered and Paired Schools	*Grades*	*% White*	*% Black*
Ballard	K, 1-4	54.3	45.7
Bradenton	K, 5-6	61.1	38.9
Manatee	K, 1-4	56.8	43.2
Blackburn	K, 1-2	48.0	52.0
Tillman	K, 3-4	51.1	48.9
Palmetto	K, 1-4	54.6	45.4
Palm View	K, 1-4	49.0	51.0
Memorial	K, 5-6	50.7	49.3

TABLE 4

A Comparison of Percentages of Black Students
At Affected Schools Under Plans A, B, and C

Plan	*Range of Black Percentages*	*Average % Black*	*Deviation from all county average of 23.3%*
A	46.0 – 66.5	55.5	32.2
B	17.8 – 38.0	29.6	6.3
C	38.9 – 52.0	46.8	23.5

C. Action of the Court Below

The United States Court of Appeal for the Fifth Circuit in its decision of June 26, 1970, affirmed the Order of the District Court of January 29, 1970, whereby the Court found H.E.W. Plans A and C would not establish unitary systems and approved Plan B, ordering its implementation. The Court of Appeals stated that the only question was

> "...whether that court abused its discretion by adopting an unworkable plan or one based on an incorrect legal standard... Expressed in other terms, the appellate question is: Did the District Court invoke a remedy so extreme as to constitute an abuse of its discretion? However put, the answer clearly is: No."

D. Effect of the Decision Below

The effect of the brief opinion of the Circuit Court is to approve as correct the legal standards relied upon by the District Court in its order of January 29, 1970, whereby it declared H.E.W. Plans A and C would not produce unitary systems while Plan B would, and in which it failed to rule on Petitioners' neighborhood plan as presented in its Notification of Compliance and Motion for Approval.

REASONS FOR GRANTING WRIT

The conversion of dual school systems maintained pursuant to state law to systems which are unitary under the requirements of the constitution has caused a proliferation of court cases, has become an issue in many political campaigns, has caused concern and confusion in the executive branch and has touched the lives of millions of Americans. Not all problems attendant thereto can be solved by the judiciary, but a definitive decision as to what is required to effect such a conversion can ease the tremendous burdens placed on the judiciary and the local school systems. This case provides a vehicle to decide an important question of federal law which has not been, but should and must be, settled by this Court.

Legal standards and guidelines to be used by the lower courts and school systems have not been issued by this Court. This leaves the lower courts free to adopt many, varied and

contradictory legal requirements. All of the standards which have been employed by lower courts cannot be legally correct as many are mutually exclusive, i.e. neighborhood schools vis-a-vis racially balanced schools. Many times the standards used are not articulated but are readily determinable by reference to the results produced. In the instant case the District Court did not set forth the standards used, but the standards can be ascertained by reference to the reasoning set forth in the order and the results achieved. The Circuit Court approved this application of legal standards which it had refuted in other cases and which have been rejected in other circuits. If the other cases are correct, then the Circuit Court in the instant case has sanctioned an extreme departure from the accepted and usual course of this type of proceedings. The standards used by the District Court are set forth as parts "a" through "d" of the question presented to this Court in this petition.

Six areas of consideration are set forth in *Green v. County School Board of New Kent County*, 391 U.S. 430. In this case only one area, student body composition, is in possible non-compliance. The order in this case, as shown in the statement of facts, requires substantial racial balance as to students before the system could be found to be unitary.

The Constitution requires wholly non-racial public school systems. This Court has never ruled that a unitary school system is one in which substantial racial balance as to student body composition is required. There appears to be a subliminal theme in desegregation cases decided by this Court indicating that race must not be considered. This starts in *Brown v. Board of Education* I, 347 U.S. 483, and runs through *Alexander v. Holmes County Board of Education*, 396 U.S. 19. This Court in *Alexander* held that a unitary system is one within which "no person is to be effectively *excluded* from any school because of race or color." (emphasis added). There is no requirement that a person be included because of race or color, and, in fact, to so require would result in an exclusion from another school solely on the basis of race or color.

The necessity or non-necessity of racial balance is an important question of federal law which should be settled by this Court. It is a question in which there is a conflict among the decisions of the Courts of Appeal in the several circuits. The

Sixth Circuit in *Deal v. Cincinnati Board of Education*, 369 F. 2d. 55, cert. denied 389 U.S. 847, 88 S. Ct. 39, 19 L.Ed. 2d. 114 held that there is no constitutional duty on the part of a Board to bus Negro or white children out of their neighborhoods or to transfer classes for the sole purpose of alleviating racial imbalance. The Fourth Circuit in *Swann v. Charlotte-Mecklenburg Board of Education*, 369 F. 2d. 29, holds that substantial racial balance is not necessary. Other cases in other circuits have made similar rulings. The Fifth Circuit is unsettled but in recent cases has become extremely color conscious and has demanded racial balance. See *United States v. Jefferson County Board of Education*, 372 F. 2d. 836, cert. denied *sub nom. Caddo Parish School Board v. United States*, 389 U.S. 840.

This Court has been presented with a plethora of briefs addressed to the provisions of the Civil Rights Act of 1964 and Congressional intent in passage of that Act. The same is true of the position of the Executive Branch of the United States Government. It seems unnecessary to unduly extend this petition with repetition of those items.

Another question which arises, assuming this Court determines that substantial racial balance is required within a unitary system is whether or not each school within a system must have both black students and white students within its student body composition. It is obvious that the lower Court in this case ruled that there must be blacks and whites in every school whenever possible. The various Circuits are in conflict over this question. This problem appears in the Fifth Circuit case of *Graves v. Walton County Board of Education*, 403 F. 2d. 184, wherein the Court holds that if there are still all-Negro schools, the plan fails, as a matter of law, to meet constitutional standards established in the *Green* case. This theorem is carried forward in the Eighth Circuit in *Jackson v. Marvell School District*, 416 F. 2d. 380. The Fourth Circuit in *Swann v. Charlotte-Mecklenburg Board of Education, supra*, holds that the presence of an all black school will not invalidate an otherwise unitary system. The same conclusion is reached in the Sixth Circuit in the *Deal* cases and has also been reached in the Fifth Circuit in *Ellis v. Board of Public Instruction of Orange County*, 423 F. 2d. 203. The contradictory positions reached in the Fifth Circuit may be attributed to the fact that different panels sat in these cases.

The District Court had five plans before it for consideration. Rejection of several plans was based upon the premise that the plans were an open invitation to resegregation. Will possible resegregation render a system non-unitary? This appears to be a question which has not been directly answered by any court. The courts have made rulings which can easily lead to the conclusion the resegregation is not a factor in consideration of whether or not a system is unitary.

Plans which meet the definition of a unitary system as set forth by this Court in *Alexander* could be presented and approved while containing the possibility of resegregation. A plan which is adopted and approved as unitary must be a constitutional plan. Assuming that the system is operated in strict compliance with the approved plan, any segregation which occurs in the future could not be the result of official action of the school board in maintaining a dual system but would be the result of other factors. That type of segregation has been categorized as *de facto* segregation. The logical conclusion of a consideration of possible resegregation is that the Constitution requires there be no *de facto* segregation in a unitary school system. To date the lower courts have, in many instances, refused to hold that such is required by the Constitution. See *Downs v. Board of Education*, 336 F. 2d. 988, cert. denied 380 U.S. 914; *Bell v. School City of Gary*, 324 F. 2d. 209, cert. denied 377 U.S. 924; *Deal v. Cincinnati Board of Education, supra.*

The District Court in this case ordered a plan that of necessity required extensive additional bussing for its implementation. Although the Court's Order never directly mentioned transportation or bussing, the record will reflect that a substantial portion of the hearing was devoted to a discussion of bussing, its costs and feasibility.

Heretofore, most legal consideration of bussing has involved the effect of the so-called "anti-bussing amendment" to the Civil Rights Act of 1964, 42 U.S.C. § 2000 C – 6 (a). The question has been the enabling effect vis-a-vis the disabling effect of that legislation. The case at bar, however, presents to this Court the more fundamental constitutional question of whether Courts are authorized to direct school districts to bus in their efforts to fashion acceptable attendance plans, or

whether they are limited to desegregation plans that do not require additional transportation. That question has, to Petitioners' knowledge, gone undecided.

The District Court said in this case that it can order bussing. Whether that is correct is a question of such urgency that this Court should move decisively to settle it once and for all. Whether termed forced bussing, cross bussing, bussing to achieve a racial balance or bussing to end state imposed segregation, bussing has become the central issue in many desegregation cases. As such the questions demand a definitive answer from this Court. No clarification of the practical problems of court-ordered desegregation can be complete unless bussing is included.

The Chief Justice in *Northcross v. Board of Education*, No. 1136, 38 LW 4219, in his concurring opinion succinctly states the reasons for the granting of this petition when he stated:

> "...From what is now before us in this case it is not clear what issues might be raised or developed on argument; as soon as possible, however, we ought to resolve some of the basic practical problems when they are appropriately presented including whether, as a constitutional matter, any particular racial balance must be achieved in the schools; to what extent school districts and zones may or must be altered as a constitutional matter; to what extent transportation may or must be provided to achieve the ends sought by prior holdings of the Court. Other related issues may emerge."

The long standing vacancy therein mentioned has now been filled.

CONCLUSION

For the foregoing reasons this petition for a Writ of Certiorari should be granted; and we urge that this case be set for argument with or shortly after No. 281, *Swann v. Charlotte-Mecklenburg Board of Education.* In the event that the Court should take such action, counsel for these Petitioners is prepared to proceed under an accelerated briefing schedule.

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APPENDIX A

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 29425

CAROLINE HARVEST, ET AL,
Plaintiffs-Appellees.

versus

BOARD OF PUBLIC INSTRUCTION
MANATEE COUNTY, FLORIDA, ET AL,
Defendants-Appellants-Cross Appellees,

versus

JEROME PRATT, ET AL,
Intervenors-Appellees-Cross Appellants.

Appeal from the United States District Court
for the Middle District of Florida

(June 26, 1970)

Before BROWN, Chief Judge, MORGAN and CLARK,
Circuit Judges.

PER CURIAM: The issue on this appeal is not whether the district court selected the best possible plan for unitizing the Manatee County School System but rather whether that court abused its discretion by adopting an unworkable plan or one based on an incorrect legal standard. See *Carter v. West Feliciana Parish School Board*, 396 U.S. 290, 292, 90 S.Ct. 608,

24 L.Ed. 2d 477, 479 (1970) (concurring opinion of Mr. Justice Harlan). Expressed in other terms the appellate question is: Did the district court invoke a remedy so extreme as to constitute an abuse of its discretion? However put, the answer clearly is: No.

The judgment of the district court is AFFIRMED without prejudice to further consideration by the district court of the present student assignment plan in light of the experience gained since its implementation.

CLARK, Circuit Judge, concurring:

I concur in the affirmance and remand of this cause but deem it necessary to briefly explain why.

I would expressly note that, in affirming, the trial court retained jurisdiction of this cause "for such further proceedings and orders as may be necessary in this cause". Since this cause involves injunctive relief, it is always subject to change, as that court's order so adjudicated. Modifications of or changes to the present injunctive mandate are most appropriately the business of that court in the first instance. The advent of the summer recess permits a time for consideration and study of any other feasible alternatives among old proposals or new suggestions which may now be advanced by the plaintiffs, HEW, the local school board or the State Board of Education.

All parties and persons interested and affected have now had a period of actual operating experience under the plan previously implemented. With recess time now available to study alternatives, this past experience plus any new ideas advanced, now may be considered. These could amend or entirely displace the present plan, which in some instances requires bussing of children of both races across several school districts predominently attended by members of the opposite race. Possibly pupil travel time could be reduced or eliminated and scarce dollars now spent for transportation could then be put to more educationally advantageous purposes under such an amended or modified concept.

There is yet another reason why I feel that this case should be expediently returned to the court below for further review.

In this area of the law, different acceptable methods and procedures for achieving racially unitary school systems are constantly evolving. Such new developments which have recently occurred (and others yet unknown which could occur before this matter is redetermined by the district court) may be considered appropriate for application here. For example, Manatee County Schools appear to be closely similarly circumstanced, except for size, to the Charlotte-Mecklenburg district recently dealt with by the Fourth Circuit in its en banc opinion, *Swann v. Charlotte-Mecklenburg Board of Education*, --- F.2d --- (4th Cir. 1970) [Nos. 14,517 & 14,518, May 26, 1970]. The court there emphasized what the district court here has consistently recognized – that racial balancing is not the sine qua non of a unitary system – that educational reasonableness and realities must prevail over any artificial racial ratios. It could also be that the district court would want to approve several constitutionally acceptable plans as alternatives and leave the choices among them to the Manatee County School Board, as was suggested in a portion of this circuit's decision in *Mannings v. Board of Public Instruction of Hillsborough County, Florida*, --- F.2d --- (5th Cir. 1970) [No. 28,643, May 11, 1970].

Whether any of these suggestions are practicable or possible and how any one or more of them may be effectuated should now rest with the district court, which, without a doubt, will use its very best lights to resolve these volatile and difficult issues in the best interests of all litigants and the multiplied thousands of others equally affected.

Although I previously differed with our refusal to stay the *time of implementation* of the pupil placement feature of the plan then adopted *vis-a-vis* the end of the 1969-70 school term in Manatee County, I clearly recognized that the problems which I feared would develop had been the result of two factors: (1) a generously permissive order by the District Judge as to when pupil transfers were to take place, and (2) an inordinate delay in effecting such transfers by school officials. It was the latter not the former that truly created the real emergency for sound educational values due the children of all races in this district. No one showed this court that the time of implementation of pupil replacement had been planned or prepared for, nor was it coordinated with any particular

educational interlude or period. It appeared to me that it had simply been postponed until it could no longer exist – until the last possible moment when the very end of the school year was imminent. The proof made was to the effect that the whole of the school year would be put in jeopardy. Because the emergency was district-created not court-created, seemed then and seems now unimportant because the welfare of the children has to be the paramount consideration.

Because some chose to interpret my dissent differently, I feel constrained to take this opportunity to make it crystal clear that I *never* entertained the slightest feeling that the District Judge had not, could not, and would not put forth his best and most sincere efforts to maximize educational considerations while meeting the inexorable demands of the law requiring that this school system be restructured so as to abolish its former racial duality.

APPENDIX B

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT
TAMPA DIVISION

No. 65-12 Civ. T.

CAROLINE HARVEST, ET AL,
Plaintiffs

versus

BOARD OF PUBLIC INSTRUCTION
OF MANATEE COUNTY, FLORIDA, ET AL,
Defendants

ORDER

This case was begun in 1965. An order of the Court on June 27, 1969 rejected as inadequate a plan for desegregation submitted by defendants and ordered the submission of a new plan. Defendents appealed the order and plaintiffs cross-appealed, alleging that the Court's order did not sufficiently dismantle the dual school system in Manatee County. On December 12, 1969 the Fifth Circuit reversed on the cross-appeal and remanded to this Court for compliance with the requirements of *Singleton v. Jackson Mun. Sep. Sch. Dist*, ––– F.2d ––– (No. 26285, Dec. 1, 1969).

On October 29, 1969 the Supreme Court declared the concept of deliberate speed defunct and announced that "the obligation of every school district is to terminate dual school systems at once and to operate now and hereafter only unitary schools." *Alexander v. Holmes County Bd. of Education*, 396 U.S. 19, 24 L.Ed. 2d 19, 90 S.Ct. 29 (1969).

The *Holmes* case was implemented in the Fifth Circuit by *Singleton v. Jackson Mun. Sep. Sch. Dist.*, supra. *Singleton* provided that desegregation and the establishment of a unitary

system would come in two steps – faculty and activities by February 1, 1970, and students by September 1970, that is, the beginning of the 1970-1971 school year. *Singleton* ordered that its directives "be effectuated in these and all other school cases now being or which are to be considered in this or the district courts of this circuit."

A hearing in this case was held pursuant to order on December 22, 1969, at which time the Court apprised the parties of the supervening provisions of *Singleton*.

On January 14, 1970 the Supreme Court reversed *Singleton* insofar as it delayed student integration until September 1970;[1] four justices held that desegregation as to students must occur by February 1, 1970; two others held that it must occur within eight weeks of a finding of the existence of a non-unitary system.

On January 26, 1970 a hearing in this case was held, at which time the Court and counsel discussed various plans for desegregation submitted by defendants. At the time of the hearing, the Court indicated that it would rule no later than January 29, 1970.

On January 28, 1969, the Court received a motion to intervene filed by Claude R. Kirk, Jr., Governor of the State of Florida. Under Rule 24, Federal Rules of Civil Procedure, third parties may intervene in an action either of right or by permission of court. The Governor has not sought to intervene of right, since no statute gives him the right, and since unquestionably his interest is adequately represented by existing parties. Permissive intervention is discretionary with the Court. *Goodpaster v. Oklahoma Gas & Electric Co.*, 231 F.2d 583 (9 Cir. 1963). Further more, "Intervention, whether of right or permissive, must be timely." *Becton v. Greene County Bd. of Educ.*, 32 F.R.D. 220, 223 (E.D.N.C. 1963). Here the motion to intervene was not filed until five years after the action was commenced and only one day before the expected

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[1] *Singleton et al v. Jackson Mun. Sep. Sch. Dist.* ––– U.S. –––, 90S. Ct. –––, 24 L. Ed. 2d–––.
(No. 972 Jan. 14, 1970)

ruling of the Court. Under these circumstances, the motion to intervene must be denied.

Before proceeding to the plans submitted by defendants, the Court will examine the present racial composition of Manatee County's schools. The percentage of black teachers at the elementary level is 21.5%; at the middle school level, 21.3%; at the high school level, 8%. The percentage of black students throughout the system is 23.3%.

As to faculty, the system is not unitary. Teachers are not assigned so that the percentage of black teachers at each school is substantially the percentage of black teachers throughout the system at that level, as is required by *Singleton*. As to students, the system is unitary as to secondary schools, with the exception of Lincoln Middle School, which is all black. The elementary schools are segregated; it is the elementary schools which most fall short of the law of the land and which account overwhelmingly for Manatee's status as a dual system. Three elementary schools (Bradenton, Memorial, and Tillman) are virtually all black. Ten elementary schools (Anna Maria, Duette, Myakka, Bayshore, Daughtrey, Ellenton, Miller, Palma Sola, Prine, Samoset) are virtually all white.

On January 6, 1970 the defendants submitted a plan to the Court (A Desegregation Plan for Manatee County Public Schools). The plan was prepared by the Florida School Desegregation Consulting Center, under a contract with the Department of Health, Education and Welfare (HEW), and consists of three alternative plans, Plan A, Plan B, and Plan C.

Plan A was not recommended by HEW or defendants. Under Plan A, as the result of pairing of certain schools, the percentage of black students at presently desegregated schools would rise unconscionably – at Manatee Elementary, for example, from 20.2% to 47%; at Palmetto Elementary, from 15.7% to 46%. Other schools experience only inadequate desegregation – Tillman Elementary, for example, drops from 98.3% black to 65.6%. A number of schools remain all white. The Court knows from experience, and defendants admit, that implementation of Plan A would result in resegregation. The Court joins all parties, therefore, in rejecting Plan A.

Plan B effectively desegregates Manatee County schools and establishes a unitary system as to students. All but three elementaries, all of which are distantly located, are effectively integrated, and the nature of the desegregation is such that no resegregation will result. Plan B encompasses the pairing of the three all black elementary schools with other schools.

Plan C was recommended by HEW, but not by defendants. Plan C does not establish a unitary system as to students. Many schools are left all white. In others which are presently adequately desegregated, the racial composition is altered so as to invite resegregation – Ballard Elementary, for example, goes from 18.5% black to 36.1%; Palm View Elementary from 21.1% to 49.6%; Palmetto Elementary from 15.7% to 45.1%. Black schools are not satisfactorily desegregated – Tillman, for example, goes from 98.3% black to 55.2%; Memorial from 100% to 57.1%. The Court agrees with the defendants: Plan C is unsatisfactory because it invites resegregation and does not effectively disestablish the dual school system.

Under all three plans, all-black Lincoln Middle School is paired with Palmetto, so that the black composition at Lincoln is reduced from 100% to 53.4%.

On January 20, 1970 defendants filed two additional alternative plans. Alternative Plan No. 1 proposes, in one sentence, a freedom of choice plan. The Court finds such a plan unsatisfactory, both because such plans have traditionally failed to disestablish dual systems, *Hall v. St. Helena Parish Sch. Bd.*, 417 F.2d 801 (5 Cir. 1969); *United States v. Choctaw County Bd. of Educ.*, 417 F. 2d 838 (5 Cir. 1969), and because such methods shift the affirmative duty of abolishing the dual system from the shoulders of the school boards, where it belongs, to the students and their parents. *United States v. Jefferson County Bd. of Educ.* 417 F.2d 834 (5 Cir. 1969); *United States v. Bd. Educ. of Bessemer*, 396 F.2d 44 (5 Cir. 1968).

Alternative Plan No. 2 is a partial implementation of Plan C – students would spend half their day in their present school and half their day in the school they would be assigned to were plan C in effect. For the same reasons the Court rejected Plan C, the Court rejects Alternative Plan No. 2.

On January 26, 1970, the date of the last hearing in this case, a petition for intervention was filed by numerous Manatee residents. At the hearing, the Court granted the motion to intervene and discussed with intervenors' counsel the plan submitted by intervenors for the desegregation of Manatee's schools. Intervenors' plan is in essence a modified freedom of choice plan: any child may select any school to attend; school officials are to urge students to transfer and notify their parents of this right; all students electing to transfer shall be provided transportation; faculties are to be integrated. The Court rejects intervenors' plan for the same reasons it rejected Alternative Plan No. 1. The Court reiterates: freedom of choice is not an end or a constitutional principle; it is only a tool for achieving a unitary system. *United States v. Jefferson County Bd. of Educ.*, 372 F. 2d 836 (5 Cir. 1966). This plan differs so little from the present policies of defendants that it offers practically no prospect of eradicating all vestiges of de jure segregation in Manatee County.

As to student desegregation, therefore, the Court rejects all plans except Plan B, which is the only plan proposing the establishment of a unitary school system. As to Lincoln Middle School, the pairing of it with Palmetto is the only way suggested by defendants for ending its all black status, and the Court accepts this proposal. As to faculty desegregation, only one plan has been advanced by the defendants and it apparently presupposes that the student makeup of the schools will continue as it is now. The defendants will therefore have to desegregate faculty in accordance with *Singleton* in light of the student population at the various schools under Plan B.

There remains to be considered only the time defendants must put Plan B and a concomitant faculty desegregation plan into effect. In establishing a timetable, several factors must be considered. First, there is the present school setup in Manatee County. The County is in the middle of the school year. The school system is truly dual, not unitary, and extensive reshuffling will be necessary to establish a unitary system. Second, there is the factor of the Fifth Circuit, which directly reversed this case, holding Manatee to have a unitary system, and ordered the Court to comply with *Singleton*. Also, the reversal mandate of December 12, 1969 in this case was amended by the Fifth Circuit on January 7, 1970, to order the

defendants to prepare for total desegregation by February 1, 1970, should the Supreme Court so decide. Third, there is the time factor; today is but a few days away from February 1st. Fourth, there are the holdings of the Supreme Court. In *Holmes*, the Court ordered desegregation immediately. In *Carter*, four justices decided on student desegregation by Feb. 1; two more justices held it must occur within eight weeks of a finding that a school system is dual.

The Court holds that the dual school system in Manatee County must be changed prior to the beginning of the 1970-71 school year. In light of the above factors, the Court holds that defendants must have disestablished the present system and instituted Plan B for students and a plan for faculty in accordance with *Singleton* by no later than April 6, 1970. Wherefore, it is

ORDERED, ADJUDGED, AND DECREED:

1. The motion to intervene, filed by Claude R. Kirk, Jr., Governor of the State of Florida, is hereby denied.

2. Plan B, contained within the Desegregation Plan for the Manatee County Public Schools prepared by HEW and filed Jan. 6, 1970 is hereby confirmed, approved, and ratified by the Court as the desegregation plan for Manatee County; all other plans are disapproved.

3. Defendants shall implement Plan B by no later than April 6, 1970.

4. Defendants shall assign teachers in the Manatee County School system so that, no later than April 6, 1970, the faculty composition of each and every school contains a ratio of black teachers to white teachers substantially the same as the ratio of black to white teachers in the school system as a whole at that educational level.

5. Defendants, no later than April 6, 1970 shall pair Lincoln Middle School with Palmetto as proposed on Table 7 of the Desegregation Plan for the Manatee County Public Schools prepared by HEW and filed Jan. 6, 1970.

6. On or before May 1, 1970 defendants shall submit to the Court figures showing the faculty and student composition of every school within the Manatee County System.

7. Jurisdiction is retained for such further proceedings and orders as may be necessary in this cause.

DONE and ORDERED at Tampa, Florida, this 29th day of January, 1970.

S/BEN KRENTZMAN
United States District Judge.

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E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 745

THE BOARD OF PUBLIC INSTRUCTION OF MANATEE COUNTY, FLORIDA, *et al.*,

Petitioners,

—v.—

CAROLINE HARVEST, *et al.*

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION TO CERTIORARI

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BRIEF IN OPPOSITION TO CERTIORARI

Opinions Below

The opinion of the Court of Appeals (Pet. App. A.1) is reported at 429 F.2d 414 (5th Cir. 1970). The decision of the district court is unreported.

Jurisdiction

The decision of the Court of Appeals was entered on June 26, 1970. The petition for certiorari was filed on September 23, 1970. The jurisdiction of this Court rests on 28 U.S.C. 1254 (1).

Questions Presented

Whether the Court of Appeals was correct in ruling that the District Court did not abuse its discretion by approving an HEW-prepared plan that totally desegregated a previously dual school system.

Constitutional Provisions and Statutes Involved

Pertinent excerpts from the Fourteenth Amendment to the Constitution of the United States and the Civil Rights Act of 1964 are set forth at pages 2-3 of the petition.

Statement

This school desegregation case was commenced in January of 1965 as a class action seeking injunctive relief against the continued operation of a dual, racially segregated school system in Manatee County, Florida. The board (petitioners herein) initially adopted a freedom of choice plan which was subsequently altered by district court decree of May 15, 1967 to comply with a then-recent decision in *United States* v. *Jefferson County Board of Education,* 380 F.2d 385 (5th Cir. 1967). In October, 1968, plaintiffs (respondents here) filed a motion for further relief in accord with this Court's decision in *Green* v. *County School Board,* 391 U.S. 430 (1968). At that time, the Manatee County school system operated 29 schools of which 5 were all-black or virtually all-black (90%—99.9% black). Seventy-six percent of black school population attended these five facilities and over 50% of the black teachers in the system taught at these all-black or virtually all-black schools.

In response to this motion, the district court required the board to submit a plan for the conversion of Manatee County schools to a unitary, non-racial system. The board's geographic zoning plan, submitted in February,

1969, left four schools—three elementary and one middle school (grades 6-8)—all-black. With respect to faculty desegregation, the board proposed to establish a minimum ratio of 51% white teachers in all schools in the system. In April, 1969 the district court rejected the board's plan to the extent that it permitted the continued existence of several all-black schools. It instructed the board to revise zone lines in order to achieve some desegregation in the three all-black elementary schools, thereby desegregating as well the all-black middle school into which the elementary schools were to feed. The board moved for a new trial which was denied in June, 1969. An appeal was taken from that denial in July, 1969; plaintiff filed a notice of cross-appeal in August, 1969. On that appeal, the board argued, in essence, that the district court erred in requiring desegregation of the four all-black schools. Plaintiffs, on the other hand, contended on cross-appeal that the lower court's order, requiring only alteration of zone lines to desegregate the four all-black schools and approving the faculty provisions, did not go far enough under existing constitutional doctrines. In December, 1969, the court of appeals, acting on the cross-appeal, reversed and remanded the order of the district court for compliance with the requirements of its decision in *Singleton* v. *Jackson Municipal Separate School District,* 419 F.2d 1211 (5th Cir. 1969). It found that the plan proposed by the school board and later amended by the district court did not establish a racially unitary school system. *Harvest* v. *Board of Public Instruction of Manatee County,* 421 F.2d 136 (5th Cir. 1969). On January 7, 1970, in response to a motion by plaintiffs, the court of appeals recalled and amended its mandate to conform with the decision of this Court in *Carter* v. *West Feliciana Parish School Board,* 396 U.S. 226 (1969).

On January 26, 1970, subsequent to this Court's decision in *Carter* v. *West Feliciana Parish School Board,* 326 U.S. 290 (1970), the district court held a hearing in order to consider alternative plans of desegregation—three formulated by the Florida School Desegregation Consulting Center (H.E.W.), two formulated by the board, and one other plan presented to the court by intervenors.

The three plans presented to the court by H.E.W. were denominated as Plans A, B, and C, all directed in differing degrees toward achieving desegregation of three virtually all-black elementary schools, one all-black middle school, and with achieving faculty desegregation so that all schools in the system had ratios of black to white teachers in accordance with the ratio of black to white teachers employed in the system as a whole. Plan A recommended the pairing of each of the three predominantly black elementaries with three adjacent, predominantly white schools. The effects of the implementation of Plan A would be, according to the H.E.W. report, to decrease the percentage of black students in the three black elementaries from 98.3% to 65.6%, from 98.2% to 60.4% and from 100% to 66.5%, respectively. The second alternative, Plan B, involved the clustering of the three black elementaries respectively with separate groups of three, four and two adjacent predominantly white elementaries. The implementation of Plan B would have the effect of reducing the percentage of black students in the first black elementary from 98.2% to 17.8%, in the second elementary from 98.3% to 36.2%, and in the third elementary from 100% to 24.4%. The final plan prepared by H.E.W., Plan C, recommended pairing one black school with an adjacent predominantly white school, and clustering the second and third black elementaries with two adjacent predominantly white schools each. Under this plan the third black elementary would serve as a fifth and sixth grade center for

all children in its zone, in the second black school's zone and in the zones of the white schools with which they were clustered (six schools in all). Plan C would reduce the percentage of black students in the three black elementaries from 98.2% to 38.9%, from 98.3% to 48.9% and from 100% to 49.3% respectively. All three plans presented to the court by H.E.W. contained identical recommendations for desegregating the all-black middle school and for faculty desegregation. H.E.W. recommended pairing the all-black middle schools with a nearby predominantly white middle school. And it proposed the achievement of the system-wide ratio of black and white faculty in each school in the county.

In addition to the plans submitted by H.E.W., two other plans, denominated No. 1 and No. 2, were presented by the board for the court's consideration. Plan No. 1 was a classic freedom-of-choice plan. Plan No. 2 envisioned a partial implementation of H.E.W.'s Plan C. Students would spend one-half their day in the schools to which they were already assigned and the other half in the schools to which they would be assigned under Plan C. The last of the six plans submitted to the court, that of intervenors, was a modified freedom-of-choice plan in which any child might select any school to attend, school officials were to urge students to transfer and notify their parents of this right to do so, and all students electing to transfer were to be provided with transportation. Like the plans submitted by H.E.W. and the board, faculties were to be desegregated according to a system-wide formula. In the "Notification of Compliance" filed on January 26, 1970, to which frequent reference is made in the petition (pp. 4-5), the board indicated that it had met the requirements of *Singleton, supra,* with regard to faculty desegregation and, on that basis alone, sought the dis-

trict court's approval of the Manatee County school system as unitary.

In its order of January 29, 1970, prior to the ruling on the alternative plans of desegregation submitted to it, the district court found with regard to the Manatee County school system that:

> As to faculty, the system is not unitary. Teachers are not assigned so that the percentage of black teachers at each school is substantially the percentage of black teachers throughout the system at that level, as is required by *Singleton*. As to students, the system is unitary as to secondary schools, with the exception of Lincoln Middle School, which is all-black. The elementary schools are segregated; it is the elementary schools which most fall short of the law of the land and which account overwhelmingly for Manatee's status as a dual system. Three elementary schools (Bradenton, Memorial and Tillman) are virtually all-black. Ten elementary schools (Anna Maria, Duette, Myakka, Bayshore, Daughtrey, Ellenton, Miller, Palma Sola, Prine, Samoset) are virtually all-white. (Petition A. 7)

Turning to a consideration of the alternative plans of desegregation recommended by H.E.W., the district court rejected alternative Plan A and alternative Plan C. The court indicated in rejecting Plan A that its result would be to increase unconscionably the percentage of black students at presently desegregated schools and to decrease inadequately the percentage in predominantly black schools leading, therefore, inevitably to resegregation. Plan C was rejected by the court first, because many schools continued as all-white facilities, secondly, because under such a plan the percentage of black students in already desegregated

predominantly white schools would be altered so as to invite resegregation and, finally, because the predominantly black schools would not be satisfactorily desegregated.

With regard to the plans proposed by the board, the court rejected Plan No. 1 because freedom-of-choice had traditionally failed to disestablish dual systems and because such methods shifted the affirmative duty of abolishing the dual system from the shoulders of the school boards, where it belonged, to the students and their parents. Plan No. 2 was rejected by the court for the same reasons that H.E.W.'s Plan C was rejected. The plan submitted by the intervenors was rejected on the same grounds given by the court for rejecting the board's Plan No. 1. Having considered five of the six plans presented to it, the district court indicated its approval of Plan B, stating as follows:

> Plan B effectively desegregates Manatee County schools and establishes a unitary system as to students. All but three elementaries, all of which are distantly located, are effectively integrated and the nature of the desegregation is such that no resegregation will result. (Petition A. 5)

As to the desegregation of the all-black middle school, the court accepted the H.E.W. proposal of pairing it with a nearby predominantly white middle school as the only way to end its segregated status. On the matter of faculty desegregation, the board was ordered to assign teachers so that the faculty composition of each and every school contained a ratio of black to white teachers substantially the same as the ratio of black to white teachers in the school system as a whole at the educational level. The board was ordered to implement Plan B on or before April 6, 1970 to establish a unitary system in Manatee County.

On February 24, 1970, the board filed notice of appeal, seeking review of the district court's January 29, 1970 order. No stay was granted pending appeal. However, as a result of several ancillary proceedings in the district court, the court of appeals and this Court involving opposition by the Governor of Florida to the proposed desegregation of Manatee County schools,[1] Plan B was implemented on April 13, 1970, one week later than the deadline required by the lower court's order.

By order of April 15, 1970, the court of appeals, acting pursuant to 28 U.S.C.A. § 2106, directed the district court to supplement its findings of fact in the instant case with respect to the following matters: (1) the present racial composition of the student population in every school in Manatee County school system; (2) the number of white students who could be assigned to the predominantly black schools if an *Ellis*[2] type neighborhood assignment plan were implemented in Manatee County; (3) maps showing location of each school in the system and the attendance area served; (4) a description of the school transportation system; (5) a description of present or proposed construction or expansion of school facilities; and (6) the existence of a bi-racial advisory committee. After hearing both parties and permitting them to file proposed findings of fact, the district court submitted its supplemental findings of fact on April 24, 1970.

On June 26, 1970, the 5th Circuit unanimously affirmed the district court's ruling stating:

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[1] Details of these proceedings can be found at 425 F.2d 1224 (5th Cir. 1970), 90 S. Ct. 1254 (1970) and 312 F. Supp. 269 (M.D. Fla., 1970).

[2] *Ellis* v. *Board of Public Instruction of Orange County, Fla.*, 423 F.2d 203 (5th Cir. 1970).

> The issue on this appeal is not whether the district court selected the best possible plan for unitizing the Manatee County School System but rather whether that court abused its discretion by adopting an unworkable plan or one based on an incorrect legal standard [citations omitted]. Expressed in other terms the appellate question is: Did the district court invoke a remedy so extreme as to constitute an abuse of its discretion? However put, the answer clearly is: No. (Petition A. 1-2).

In affirming, the court of appeals indicated that its action was "without prejudice to further consideration by the district court of the present student assignment plan in light of the experience gained since its implementation." (Petition A. 2). In accordance with this directive, the lower court has subsequently approved two board-suggested modifications of Plan B in orders of August 24, 1970 and January 4, 1971.

ARGUMENT

Petitioners seek review by this Court of the same issue presented to the Court below, namely, whether the district court abused its discretion by ordering a plan implemented that totally desegregated a formerly dual school system. The district court was obligated by rulings of this Court in *Brown* v. *Board of Education*, 347 U.S. 483 (1954); 349 U.S. 294 (1955), *Green* v. *County School Board, supra, Alexander* v. *Holmes County Board of Education*, 396 U.S. 19 (1969) and *Carter* v. *West Feliciana Parish School Board*, 326 U.S. 290 (1970) to disestablish immediately the dual school system in Manatee County.

Specifically, *Green, supra* established that:

> The obligation of the district courts, as it always has been, is to assess the effectiveness of a proposed plan

> in achieving desegregation. There is no universal answer to complex problems of desegregation; there is obviously no one plan that will do the job in every case. The matter must be assessed in light of the circumstances present and the options available in each instance. It is incumbent upon the school board to establish that its proposed plan promises meaningful and immediate progress toward disestablishing state imposed segregation. It is incumbent upon the district court to weigh that claim in light of the facts at hand and in light of any alternatives which may be shown as feasible and more promising in their effectiveness. 391 U.S. 430, 439

In accordance with this responsibility, the district court considered three plans prepared by educational experts from an H.E.W. Center, two plans prepared by the board and one other prepared by intervenors to determine which plan would most effectively disestablish the dual school system in Manatee County. Notable vestiges of the dual system were four all-black schools and continuing segregation of faculty.

The court's rejection of the two fredom-of-choice plans proposed by the board and by intervenors was clearly in line with this Court's holdings in *Green, supra.* Nor did it act improperly in disapproving the half-and-half modification proposed by the board of H.E.W. Plan C. After evaluating the three remaining plans, the court chose Plan B as the most effective since it clearly reduced to the lowest level the percentage of black children in the formerly all-back schools. Plan B, contrary to petitioners' assertions, was prepared by educational experts who considered it as a feasible and workable plan of desegregation. H.E.W. preferred Plan C to Plan B solely because it regarded the latter as "more extensive than necessary and would meet with

considerable adverse community reaction." In reviewing the district court's order, the court of appeals found nothing to indicate that Plan B was infeasible or unworkable. To the extent that petitioners claim that the courts below erred in considering the prospects of resegregation in order to determine the most feasible plan, that argument is foreclosed as well by decision of this Court. Since *Brown II, supra,* this Court has pressed district courts to exercise their broad powers in order to eliminate segregated schools "root and branch" and has declared that a district court has not only the power, but in fact "the duty to render a decree which will so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future." *Green, supra,* at 438; *Louisiana* v. *United States,* 380 U.S. 145, 154 (1965); and *Raney* v. *Board of Education,* 391 U.S. 443, 449 (1968). *Green, supra,* indicated that the question of desegregation must be assessed by the district court "in light of the circumstances present" in each case. The district court was not clearly in error in viewing resegregation as one of the circumstances that should be considered in this case to evaluate the relative effectiveness of the plans presented to it. Petitioners present no argument to establish that the requirements of *Green, supra* were violated in any way. Since the principles established by this Court in the *Green* case dispose of the only significant issue raised by the record in this case, the petition for a writ of certiorari should be denied.

Insofar as petitioners seek review of the questions of racial balance and busing which they contend are raised by this record, this Court presently has before it two cases, *Swann* v. *Charlotte-Mecklenburg Board of Education,* Nos. 281 and 349, this Term, and *Davis* v. *Board of School Commissioners of Mobile County,* No. 436, this term, in which those issues have already been extensively briefed and

argued. To the extent that decisions in those cases may affect the issues decided in this case, appropriate motions for supplemental relief or modification may be presented to the courts below.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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